UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. WEYERHAEUSER COMPANY, Defendant.	Civil Action No.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF ACTION

1. This is a civil action brought against Weyerhaeuser Company ("Weyerhaeuser" or "the Company") to obtain injunctive relief and civil penalties for violations of the Clean Air Act ("the CAA"), 42 U.S.C. § 7401 et seq., and the regulations implementing the CAA. The violations in the Complaint occurred at Weyerhaeuser pulp and paper mills located in Bennettsville, South Carolina; Kingsport, Tennessee; and Hawesville, Kentucky.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; and CAA Section 113(b), 42 U.S.C. § 7413(b).

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395; and CAA Section 113(b), 42 U.S.C. § 7413(b).

NOTICE TO STATE

4. Notice of the commencement of this action has been given to the states of South Carolina, Tennessee, and Kentucky pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b).

DEFENDANT

5. Weyerhaeuser is incorporated in Washington state and registered to do business in, *inter alia*, Kentucky, South Carolina, and Tennessee.

6. In 2002, Weyerhaeuser merged with Willamette Industries, Inc.

7. As a result of the 2002 merger, Weyerhaeuser became owner and operator of:

(A) a pulp and paper mill located at 585 Willamette Road, Bennettsville, South Carolina 29512 ("the Bennettsville Mill");

(B) a pulp and paper mill located at 100 Clinchfield Street, Kingsport, Tennessee 37660 ("the Kingsport Mill"); and

(C) a pulp and paper mill located at 58 Wescor Road, Hawesville, Kentucky 42348 ("the Hawesville Mill").

8. Weyerhaeuser is a "person" within the meaning of CAA Section 302(e), 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

9. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

A. Prevention of Significant Deterioration

1. The National Ambient Air Quality Standards

10. CAA Section 108(a), 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such pollutant, CAA Section 109, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public health and welfare. Pursuant to CAA Sections 108 and 109, EPA has identified and promulgated NAAQS for pollutants including particulate matter ("PM") (now measured in the ambient air as PM-10). 40 C.F.R. §§ 50.6 and 50.7.

11. Under CAA Section 107(d), 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

2. Prevention of Significant Deterioration Requirements

a. Relevant Statutory Provisions

12. CAA Part C, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards.

13. CAA Section 165(a), 42 U.S.C. § 7475(a), among other things, provides that no "major emitting facility" shall be constructed in an area designated as attainment unless a permit has been issued that comports with the requirements of Section 165, including the requirement that the facility install and operate the best available control technology for each pollutant subject to CAA regulation that is emitted from the facility.

14. CAA Section 169(1), 42 U.S.C. § 7479(1), designates kraft pulp mills that emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities."

15. CAA Section 169(2)(C), 42 U.S.C. § 7479(2)(C), defines "construction" as including "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

b. Relevant Regulatory Provisions

16. Pursuant to CAA Part C, EPA promulgated PSD regulations in 1978, 43 Fed. Reg. 26,388 (June 19, 1978), and in 1980, 45 Fed. Reg. 52,676 (August 7, 1980).

17. As set forth at 40 C.F.R. § 52.21(i), a PSD permit is required prior to construction of any major stationary source or major modification in an area designated as attainment or unclassifiable.

18. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act.

19. With regard to an increase in emissions of PM, "significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) as a net emissions increase at a rate that would equal or exceed 25 tons per year of PM. "Net emissions increase" means "the amount by which the sum of the following exceeds zero:

A. Any increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in method of operation at a stationary source; and

B. Any other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable."

40 C.F.R. § 52.21(b)(3)(i).

20. As set forth at 40 C.F.R. § 52.21(j), a source with a major modification in an attainment area must install and operate best available control technology ("BACT") for each pollutant subject to regulation under the Act for which the modification would result in a significant net emissions increase.

21. As set forth at 40 C.F.R. § 52.21(k), the PSD program requires a person who wishes to modify a major source in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

22. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area.

23. As set forth in 40 C.F.R. § 52.21(n), the owner or operator of a proposed modification must submit all information necessary to make any analysis or make any determination required under 40 C.F.R. § 52.21.

24. As set forth in 40 C.F.R. § 52.21(o), the owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation resulting from the source or modification.

3. Kentucky State Implementation Plan

25. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require states to adopt State Implementation Plans ("SIPs") that contain emission limitations and such other measures to prevent significant deterioration of air quality in attainment areas.

26. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations, which must be at least as stringent as EPA's regulations, codified at 40 C.F.R. § 52.21.

27. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 are the applicable regulations. Any owner or operator who constructs or operates a source or modification subject to 40 C.F.R. Part 52 regulations who commences construction after the effective date of those regulations without applying for and receiving approval thereunder, is subject to appropriate enforcement action. 40 C.F.R. § 52.21(r).

28. Under Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), each SIP must include a program to regulate the modification and construction of any stationary source of air pollution, regardless of whether the source is defined as "major," in both attainment and nonattainment areas of the state as necessary to assure that NAAQS are achieved.

29. The State of Kentucky submitted to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in Kentucky ("the Kentucky SIP"). The Kentucky SIP was originally approved by the Administrator on May 31, 1972. 37 Fed. Reg. 10842 (1972). Since 1972, the Kentucky SIP has been amended numerous times, and the current regulations approved by the Administrator are specified at 40 C.F.R. §§ 52.920(c).

30. Prior to September 1, 1989, the Kentucky SIP did not include provisions related to PSD. Upon information and belief, on April 12, 1977, EPA delegated authority to Kentucky to issue PSD permits under the federal regulations applicable in Kentucky.

31. On September 1, 1989, EPA approved revisions to the Kentucky SIP which included a regulation for PSD. 54 Fed. Reg. 36307.

B. Recycling and Emissions Reduction Regulations

32. Subchapter VI of the Act, 42 U.S.C. §§ 7671 to 7671q, sets forth requirements for stratospheric ozone protection. CAA Section 608, 42 U.S.C. § 7671g(a), directs the EPA to establish a National Recycling and Emissions Reduction Program by promulgating regulations establishing standards and requirements regarding the use and disposal of substances designated as class I and class II substances. These regulations include requirements that (A) reduce the use

of and emission of such substances to the lowest achievable level, and (B) maximize the recapture and recycling of such substances. 42 U.S.C. § 7671g(a)(3).

33. CAA Section 602, 42 U.S.C. § 7671a, lists substances which the Administrator is required to define as class I and class II substances. Pursuant to that requirement, the Administrator listed various substances, including chlorodifluoromethane ("HCFC-22") which is defined as a class II substance. 40 C.F.R. Part 82, Subpart A, Appendix B.

34. Pursuant to CAA Section 608, 42 U.S.C. § 7671g, EPA promulgated Recycling and Emissions Reduction regulations intended to reduce emissions of class I and class II substances used as refrigerants to the lowest level achievable during the service, maintenance, repair and disposal of appliances. Those regulations are codified at 40 C.F.R. Part 82, Subpart F (§§ 82.150 to 82.166).

35. The Recycling and Emissions Reduction regulations at 40 C.F.R. Part 82, Subpart F apply, inter alia, to any person servicing, maintaining, or repairing appliances (except motor vehicle air conditioners ("MVACs")), and to appliance owners. 40 C.F.R. § 82.150(b). The regulations define the term "appliance" to mean any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer. 40 C.F.R. § 82.152.

36. Pursuant to the Recycling and Emissions Reduction regulations, no later than August 12, 1993, or within 20 days of commencing business for those persons not in business at the time of promulgation, persons maintaining, servicing, or repairing appliances (except MVACs) must certify to the Administrator that such person has acquired certified recovery or recycling equipment and is complying with the applicable requirements of 40 C.F.R. Part 82,

Subpart F. 40 C.F.R. § 82.162(a). The owner of the recovery or recycling equipment may perform the certification for his or her employees. 40 C.F.R. § 82.162(a). Certificates under 40 C.F.R. § 82.162(a) are not transferable and in the event of a change of ownership of an entity that maintains, services, or repairs appliances (except MVACs), the new owner of the entity shall certify within 30 days of the change of ownership pursuant to 40 C.F.R. § 82.162(a). 40 C.F.R. § 82.162(b).

37. Pursuant to the Recycling and Emissions Reduction regulations, owners or operators of certain types of appliances, including comfort cooling devices, which normally contain more than 50 pounds of refrigerant must have leaks repaired in accordance with 40 C.F.R. § 82.156(i)(9) if the appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period, unless certain specified exceptions apply. 40 C.F.R. § 82.156(i)(5). Regulations at 40 C.F.R. § 82.156(i)(9) require owners or operators to repair leaks pursuant to 40 C.F.R. § 82.156(i)(5) within 30 days after discovery.

38. CAA Section 114(a) grants the Administrator the authority to implement Subchapter VI of the Act by requiring any person subject to the provisions of the Act to provide information to the Administrator that he may reasonably require to ensure compliance with the CAA and its applicable regulations.

39. Upon discovering violations, the Administrator may commence a civil action in the United States District Court to enforce the requirements of Subchapter VI of the Act and seek civil penalties of not more than $25,000 per day for each violation of those requirements. 42 U.S.C. §§ 7413(a)(3) and (b). Pursuant to the Federal Civil Penalties Inflation Adjustment

Act of 1990 (28 U.S.C. § 2461; Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note; Pub. L. 104-134, enacted April 26, 1996; 110 Stat. 1321), the maximum civil penalty per day for each violation occurring after January 30, 1997 has been increased to $27,500. 40 C.F.R. §§ 19.1-19.4.

FACTUAL ALLEGATIONS

A. Violations of the Prevention of Significant Deterioration Requirements

40. The Hawesville Mill is a kraft pulp mill that emits or has the potential to emit one hundred tons per year or more of PM.

41. At times relevant to this Complaint, the Hawesville Mill was located in an area that had been classified as attainment or unclassifiable for PM.

42. On January 29, 1980, the the Kentucky Department for Natural Resources and Environmental Protection, Division of Air Pollution Control received a PSD application from the Hawesville Mill to install, inter alia, a new No. 2 Hogged fuel boiler.

43. On April 30, 1980, the Kentucky Department for Natural Resources and Environmental Protection, Division of Air Pollution Control issued Construction Permit No. C-80-24.

44. Construction Permit No. C-80-24 set a limit of 0.04 gr/dscf (grains per dry standard cubic foot) PM for the No. 2 Hogged Fuel Boiler (referred to in the permit as the "Erie City Wood Waste Boiler and Associated Fuel Handling System).

45. General Condition 4 of Construction Permit No. C-80-24 required the permittee to conduct a performance test to measure, inter alia, PM emissions from the No. 2 Hogged Fuel Boiler.

46. The No. 2 Hogged Fuel Boiler started up on March 12, 1981.

47. Construction of the No. 2 Hogged Fuel Boiler was a physical change in, or change in the method of operation of, the Hawesville Mill which increased the amount of an air pollutant emitted by the Hawesville Mill or which resulted in the emission of an air pollutant not previously emitted.

48. The Permittee conducted a performance test for PM on the No. 2 Hogged Fuel Boiler on September 15-16, 1981.

49. On January 20, 1984, the Kentucky Department for Natural Resources and Environmental Protection, Division of Air Pollution Control issued Construction Permit No. C-84-12 for, inter alia, construction of a new waste wood drier systems to be incorporated into the No. 2 Hogged Fuel Boiler. The waste wood drier system utilized hot exhaust gases from the No. 2 Hogged Fuel Boiler to dry waste wood being conveyed into the boiler as fuel. Thus, emissions from the waste wood drier system are also emissions from the No. 2 Hogged Fuel Boiler.

50. Construction Permit No. C-84-12 Permit remains in effect today.

51. Construction Permit No. C-84-12 set a PM limit of 3.42 pounds per hour and 14.36 tons per year for the waste wood drier system.

52. General Condition 3 of Construction Permit No. C-84-12 required the permittee to conduct a performance test to measure, inter alia, PM emissions from the No. 2 Hogged Fuel Boiler.

53. The Permittee conducted a performance test for PM on the No. 2 Hogged Fuel Boiler on August 21, 1984.

54. The performance tests for PM conducted on September 15-16, 1981 and August 21, 1984 demonstrate that the permittee exceeded the emission limits for PM in both Construction Permit No. C-80-24 and Construction Permit No. C-84-12.

55. The No. 2 Hogged Fuel Boiler and its related waste wood drier system continued in operation at the Hawesville Mill through August 14, 2002. After August 14, 2002, Weyerhaeuser continued to use the No. 2 Hogged Fuel Boiler but no longer operated the related waste wood drier system. Both the No. 2 Hogged Fuel Boiler and its related waste wood drier system remain in place at the Hawesville Mill today.

56. No performance test has been conducted which shows that the No. 2 Hogged Fuel Boiler and its related waste wood drier system are in compliance with Construction Permit No. C-84-12.

57. While in operation, the No. 2 Hogged Fuel Boiler has emitted PM in excess of the permitted limit.

58. On or about August 14, 2002, Weyerhaeuser stopped using waste wood as a fuel in the No. 2 Hogged Fuel Boiler. Instead, Weyerhaeuser used natural gas as a fuel.

59. On or about December 30, 2002, Weyerhaeuser Company submitted an application to the Kentucky Department of Environmental Protection for a modification to

Construction Permit No. C-84-12. Weyerhaeuser Company requested a modification that would prohibit the use of any fuel other than natural gas in the No. 2 Hogged Fuel Boiler.

60. If Weyerhaeuser Company uses only natural gas as a fuel in the No. 2 Hogged Fuel Boiler, emissions of PM will be well below the permitted limit.

B. Violations of the Recycling and Emissions Reduction Regulations

61. On March 21, 2003 and pursuant to its authority under CAA Section 114, 42 U.S.C. § 7414, EPA Region 4 sent letters to Weyerhaeuser requesting information regarding compliance with the regulations at 40 C.F.R. Part 82, Subpart F (§§ 82.150 to 82.166) at Weyerhaeuser's Bennettsville, South Carolina; Kingsport, Tennessee; and Hawesville, Kentucky facilities. Weyerhaeuser responded to these requests by letters dated April 23, 2002 and August 27, 2002.

1. Bennettsville, South Carolina Facility

62. Weyerhaeuser's Bennettsville mill has five appliances using class I and class II substances as refrigerants, including four industrial process chillers and one comfort cooling appliance.

63. Weyerhaeuser hired outside contractors to maintain, service and repair the appliances. One of the contractors hired by Weyerhaeuser was Edwards Refrigeration.

64. Neither Weyerhaeuser nor Edwards Refrigeration certified to the Administrator that it had acquired certified recovery or recycling equipment and was complying with the applicable requirements of 40 C.F.R. Part 82, Subpart F until Weyerhaeuser submitted a certification form for Edwards Refrigeration dated July 25, 2003.

2. Kingsport, Tennessee Facility

65. The Kingsport mill has one comfort cooling appliance using a class II substance as a refrigerant.

66. At times Weyerhaeuser's employees maintained, serviced, and repaired the comfort cooling appliance.

67. Neither Weyerhaeuser nor its employees certified to the Administrator that it had acquired certified recovery or recycling equipment and was complying with the applicable requirements of 40 C.F.R. Part 82, Subpart F until Weyerhaeuser submitted a certification for its employees dated August 11, 2003.

3. Hawesville, Kentucky Facility

68. The Hawesville mill has two comfort cooling appliances, 311-4002 and 810-4180, using HCFC-22, a class II substance, as a refrigerant. Each comfort cooling appliance normally contained approximately 55 pounds of refrigerant.

a. Comfort Cooling Appliance 311-4002

69. On or about June 21, 2000, leaks were detected in comfort cooling appliance 311-4002 and the appliance was fully charged.

70. On or about August 30, 2000, leaks were detected in comfort cooling appliance 311-4002 and 20 pounds of HCFC-22 were charged into the appliance.

71. Between June 21, 2000 and August 30, 2000, comfort cooling appliance 311-4002 leaked refrigerant at a rate that would have exceeded 15 percent of the total charge during a 12-month period.

72. The leak discovered in comfort cooling appliance 311-4002 on or about August 30, 2002 was not repaired until or about December 19, 2000.

b. Comfort Cooling Appliance 810-4180

73. On or about May 16, 2000, leaks were detected in comfort cooling appliance 810-4180 and the appliance was fully charged.

74. On or about November 15, 2000, leaks were detected in comfort cooling appliance 810-4180 and 20 pounds of HCFC-22 were charged into the appliance.

75. On or about July 12, 2001, leaks were again detected in comfort cooling appliance 810-480 and 15 pounds of HCFC-22 were charged into the appliance.

76. Between May 16, 2000 and July 12, 2001, comfort cooling appliance 810-4180 leaked refrigerant at a rate that would have exceeded 15 percent of the total charge during a 12-month period.

77. The leaks discovered in comfort cooling appliance 810-4180 on or about November 15, 2000 and July 12, 2001 were not repaired until or about October 2, 2001.

FIRST CLAIM FOR RELIEF

78. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 31 and 40 through 60.

79. The Hawesville Mill is a kraft paper mill subject to the PSD Program requirements and Construction Permits Nos. C-80-24 and C-84-12.

80. Emission of PM from the No. 2 Hogged Fuel Boiler exceeded the limits specified in Construction Permit No. C-80-24 and Construction Permit No. C-84-12.

81. As provided in CAA Section 113(b), 42 U.S.C. § 7413(b), and CAA Section 167, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to $25,000 per day of violation for violations occurring on or before January 30, 1997, and $27,500 per day for each such violation occurring after January 30, 1997 and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF

82. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 9, 32 through 39, and 61 through 64.

83. The appliances owned by Weyerhaeuser and maintained, serviced or repaired by Edwards Refrigeration at the Bennettsville facility are subject to the Recycling and Emissions Reductions regulations found at 40 C.F.R. Part 82, Subpart F.

84. As an owner of appliances using class I and class II substances as refrigerants, Weyerhaeuser was required to certify that persons maintaining, servicing or repairing those appliances had acquired certified recovery and recycling equipment and was complying with the applicable requirements of the Recycling and Emissions Reduction regulations. 40 C.F.R. § 82.162(a).

85. Weyerhaeuser violated 40 C.F.R. § 82.162(a) when it failed to file its certification for Edwards Refrigeration by August 30, 1993 or within 20 days of Edwards Refrigeration commencing business. 40 C.F.R. § 82.162(a).

86. As provided in CAA Section 113(b), 42 U.S.C. § 7413(b), and CAA Section 167, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil

penalties of up to $25,000 per day of violation for violations occurring on or before January 30, 1997, and $27,500 per day for each such violation occurring after January 30, 1997 and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF

87. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 9, 32 through 39, 61, and 65 through 67.

88. The appliances owned by Weyerhaeuser and maintained, serviced or repaired by its employees at the Kingsport facility are subject to the Recycling and Emissions Reductions regulations found at 40 C.F.R. Part 82, Subpart F.

89. As an owner of appliances using class I and class II substances as refrigerants, Weyerhaeuser was required to certify that persons maintaining, servicing or repairing those appliances had acquired certified recovery and recycling equipment and was complying with the applicable requirements of the Recycling and Emissions Reduction regulations. 40 C.F.R. § 82.162(a).

90. Weyerhaeuser violated the requirements of the Recycling and Emissions Reduction regulations of 40 C.F.R. § 82.162(a) when it failed to failed to file its certification for its employees by August 30, 1993 or within 20 days of Weyerhaeuser commencing business. 40 C.F.R. § 82.162(a).

91. As provided in CAA Section 113(b), 42 U.S.C. § 7413(b), and CAA Section 167, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to $25,000 per day of violation for violations occurring on or before January 30,

1997, and $27,500 per day for each such violation occurring after January 30, 1997 and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTH CLAIM FOR RELIEF

92. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 9, 32 through 39, 61, and 68 through 72.

93. Comfort cooling appliance 311-4002, owned by Weyerhaeuser and located at its Hawesville facility, is subject to the Recycling and Emissions Reduction regulations found at 40 C.F.R. § 82.156(i)(5).

94. The Recycling and Emissions Reduction regulations require that any leaks discovered in appliances normally containing more than 50 pounds of refrigerant must be repaired within 30 days of discovery if the appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period. 40 C.F.R. § 82.156(i)(5).

95. Weyerhaeuser violated the requirements of the Recycling and Emissions Reduction regulations of 40 C.F.R. § 82.156(i)(5) when it failed to repair comfort cooling appliance 311-4002, which normally contained approximately 55 pounds of a class II substance used as a refrigerant, within 30 days of discovering a leak that exceeded 15 percent of the total charge during a 12-month period.

96. As provided in CAA Section 113(b), 42 U.S.C. § 7413(b), and CAA Section 167, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to $25,000 per day of violation for violations occurring on or before January 30,

1997, and $27,500 per day for each such violation occurring after January 30, 1997 and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTH CLAIM FOR RELIEF

97. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 9, 32 through 39, 61, 68, and 73 through 77.

98. Comfort cooling appliance 810-4180, owned by Weyerhaeuser and located at its Hawesville facility, is subject to the Recycling and Emissions Reduction regulations found at 40 C.F.R. § 82.156(i)(5).

99. The Recycling and Emissions Reduction regulations require that any leaks discovered in appliances normally containing more than 50 pounds of refrigerant must be repaired within 30 days of discovery if the appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period. 40 C.F.R. § 82.156(i)(5).

100. Weyerhaeuser violated the requirements of the Recycling and Emissions Reduction regulations of 40 C.F.R. § 82.156(i)(5) when it failed to repair comfort cooling appliance 810-4180, which normally contained approximately 55 pounds of a class II substance used as a refrigerant, within 30 days of discovering a leak that exceeded 15 percent of the total charge during a 12-month period.

101. As provided in CAA Section 113(b), 42 U.S.C. § 7413(b), and CAA Section 167, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to $25,000 per day of violation for violations occurring on or before January 30,

1997, and $27,500 per day for each such violation occurring after January 30, 1997 and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

A. Assess civil penalties against Weyerhaeuser for up to the amounts provided in the applicable statues; and

B. Permanently enjoin Defendant from operating the Hawesville Mill except in accordance with the Clean Air Act and all applicable regulatory requirements;

C. Permanently enjoin Weyerhaeuser Company to comply with all applicable requirements of the Recycling and Emissions Reduction regulations at 40 C.F.R. Part 82, Subpart F (§§ 82.150 to 82.166) at its Bennettsville, Hawesville, or Kingsport Mills.

D. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

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